



**Gitonga v Republic (Miscellaneous Criminal Application
E119 of 2024) [2025] KEHC 3925 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CRIMINAL APPLICATION E119 OF 2024**

**EN MAINA, J
MARCH 27, 2025**

BETWEEN

EDWARD MWIKAMBA GITONGA APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Applicant was initially sentenced to imprisonment for life for the offence of Defilement Contrary to Section 8(4) of the Sexual Offences Act. Subsequently, upon an appeal the sentence was reduced to imprisonment for 15 years. The Applicant now seeks a review of the sentence downwards on grounds that he is remorseful, is a first offender, that he is the sole bread winner of his family and that he has reformed. Further that he is now ready to join his family as he has good future prospects due to the courses he has so far attained during his incarceration.
2. The Respondent is however vehemently opposed to the application for reason that the sentence sought to be reviewed was reviewed by this court (Odunga J, as he then was) in Criminal Appeal no 64 of 2019 and hence it cannot be reviewed further. It is contended that not only is this application misconceived and bad in but that this court is also functus officio.
3. The Applicant however argues that this court has power to consider his mitigation with a view of reviewing the sentence. He has urged this court to consider that he has used his time in prison constructively and benefitted immensely from the rehabilitation programs thereat. Placing reliance on the case of Douglas Muthaura Nthoribi v Republic (Criminal Appeal Case No. 4 of 2015 [2018] eKLR where the court reduced a life imprisonment sentence to 15 years since the petitioner had reformed, the Applicant urged that similarly his sentence should be reduced as he has been well behaved in prison and has reformed. He submitted that he has learnt the hard way and that he regrets his actions. Further he now knows God and wishes to be reunited with his young family of a wife and six children as they have been suffering without him.



4. The revisionary jurisdiction of this court is derived from Article 165(6) of the Constitution and given effect through Section 362 of the Criminal Procedure Code. The jurisdiction is wide and unfettered and while the court may review a sentence that must not be done in a manner as would be tantamount to sitting on appeal against the judgment of a court of equal jurisdiction for the simple reason that the supervisory jurisdiction is confined to decisions of subordinate courts but not those of superior courts.
5. The Applicant herein exercised his right of appeal vide Machakos Criminal Appeal NO 64 OF 2019 Edward Mwikamba Gitonga v Republic where in a judgment delivered on 30th April 2020 Odunga J, as he then was, reduced his sentence from life imprisonment to 15 years. The Judge also ordered that the sentence was to run from 29th August 2018 that being the date the Applicant had been arrested so that the sentence would comply with Section 333(2) of the Criminal Procedure Code.
6. I am of the considered view that a reduction of the sentence having been undertaken by Odunga J, this court has no jurisdiction to review it as that would be tantamount to sitting on appeal against the judgment of a court of equal jurisdiction. The Applicant's recourse was in appealing the sentence to a higher court. My so saying finds support in the case of John Kagunda Kariuki v Republic [2019] eKLR, where Joel Ngugi, J, (as he then was) stated:

“

[10] In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal.

.....”

7. This case is clearly distinguishable from the case of Douglas Muthaura Nthoribi v R (supra) as the sentence that was reduced by the Judge was that of a lower court.
8. The upshot is that this application is not merited and it is dismissed.

It is so ordered.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF MARCH, 2025.

E. N. MAINA

JUDGE

In the presence of:

Ms Kaburu for the state

No appearance for the Applicant

C/A: Wambua

